IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1117 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIMBHAI GANDABHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/01/2006

ORAL JUDGMENT

1. Rule. Shri H.M.Prachchhak, learned AGP waives service of rule on behalf of the respondent-State Authority. With the consent of the learned advocates

for the parties, the matter is heard finally.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari dated __ June, 2002 passed under Section-32-A of the Bombay Stamp Act with respect to the Document Registration No.944 dated 8.3.2002 presented before the Sub-Registrar, Navsari.

3. It appears from the record that the petitioner is served with the notice for attachment under Section-200 of the Bombay Land Revenue Code dated 6.12.2005 and it is the contention on behalf of the petitioner that the petitioner for the first time came to know about the said order passed by the Deputy Collector, Navsari dated __ June, 2002 and immediately the petitioner challenged the same before the Chief Revenue Controlling Authority. However, the petitioner is informed that as the petitioner has preferred the appeal after a period of 90 days, the appeal of the petitioner will not be entertained as

the same is barred by the limitation.

4. Shri Z.F.Bharada, learned advocate appearing on behalf of the petitioner has also submitted that the petitioner is ready and willing to deposit 25 % of the amount as per the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari passed under Section-32-A of the Bombay Stamp Act as pre-deposit as required under Section-32-B of the Act while preferring the appeal.

5. As it is the contention on behalf of the petitioner that the impugned order was not served upon the petitioner till Notice dated 6.12.2005 is served on the petitioner and the petitioner immediately applied for certified copy of the said order and on receipt of the same, the petitioner preferred an appeal before the Chief Revenue Controlling Authority and therefore, there is no delay. Whether the order dated __ June, 2002 passed by the Deputy Collector, Stamp Duty Valuation, Navsari passed under Section-32-A was served upon the petitioner at any point of time earlier and prior to

6.12.2005___ can be confirmed by the Chief Revenue Controlling Authority which is revisional and / or appellate authority after calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Navsari who has passed the impugned order and after considering the record, it can be verified whether the impugned order was served upon the petitioner earlier or not. Under the circumstances, the Chief Revenue Controlling Authority / appellate authority is directed to consider the same after calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Navsari who has passed the impugned order dated ___ June, 2002 and if utlimately it is found that the order was not served upon the petitioner till 6.12.2005 and / or at any point of time earlier, then, the appellate authority may consider the said appeal in accordance with law and on merits. If the appeal is found to have been preferred within a period of limitation on receipt of the copy of the order, the appeal may be decided on merits after complying with necessary requirements as required under Section-32-B of the Bombay Stamp Act,

that is, on deposit of 25 % of the amount as pre-deposit. It is however clarified that this Court has not expressed any opinion on merits with regard to contention of delay and / or any other order, but this has simply directed the Chief Revenue Controlling Authority to verify the factum of controversy, whether the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari dated ___ June, 2002 was served upon the petitioner prior to 6.12.2005 or not, and to consider the same in light of the observations made hereinabove.

6. With aforesaid observations and directions, the present Special Civil Application is disposed of accordingly.

7. Rule is made absolute to the aforesaid, however, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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